

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO HINTON,

Plaintiff,

CASE NO. 1:06-CV-772

v.

HON. ROBERT J. JONKER

M. MCQUILLAN, et al.,

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 26) filed on November 6, 2007. Plaintiff filed his Objections to the Report and Recommendation (docket # 28) on November 16, 2007.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Brenneman; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds Magistrate Judge Brenneman's Report and Recommendation to be both factually sound and legally correct. Plaintiff's Objections offer nothing beyond repetition of the arguments that the Report and Recommendation carefully analyzes and rejects. In short, there is no reasonable question of fact but that Plaintiff was involved in a physical fight with another inmate, and that Plaintiff threw the first punch. No reasonable jury could conclude on this record—which includes a major misconduct conviction of Plaintiff for fighting—that the Defendants did anything in response other than in a good faith effort to restore order in a volatile and dangerous situation.

Plaintiff repeatedly urges review of a videotape that apparently captures some portion of the incident, but such a review would add nothing material to the record, and could potentially compromise legitimate security concerns of the Michigan Department of Corrections. The record already includes a detailed description of the videotape by the hearing officer who handled Plaintiff's major misconduct ticket. Moreover, nothing on the videotape undercuts the inescapable fact that Plaintiff instigated the altercation that required Defendants to respond quickly, prudently and in a volatile setting in an effort to reduce the risk of injury to all involved, including themselves. The Eight Amendment to the Constitution of the United States does not require more than this.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed November 6, 2007, is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' motion for summary judgment (docket # 11) be **GRANTED**, and that Plaintiff's claims are dismissed with prejudice.

Dated: March 31, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE